

1 **ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**

2 **DEPARTMENT OF LABOR**

3 **OFFICE OF WORKERS' CLAIMS**

4 **(Amendment)**

5 **803 KAR 25:010. Procedure for adjustments of claims.**

6 RELATES TO: KRS 342.0011, 342.125, 342.260, 342.265, 342.270(3), 342.300,
7 342.310, 342.315, 342.710, 342.715, 342.732, 342.760

8 STATUTORY AUTHORITY: KRS 342.033, 342.260(1), 342.270(3), 342.285(1)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the
10 executive director [~~commissioner~~] to promulgate administrative regulations necessary to
11 implement the provisions of KRS Chapter 342. KRS 342.270(3) requires the executive
12 director [~~commissioner~~] to promulgate an administrative regulation establishing
13 procedures for the resolution of claims. This administrative regulation establishes the
14 procedure for the resolution of claims before an administrative law judge or Workers'
15 Compensation Board.

16 Section 1: Definitions. (1) "Administrative law judge" means an individual
17 appointed pursuant to KRS 342.230(3)

18 (2) "Board" is defined by KRS 342.0011(10).

19 (3) "Civil rule" means the Kentucky Rules of Civil Procedure.

(4) "Executive Director [~~Commissioner~~]" is defined by KRS 342.0011(9).

(5) "Date of filing" means the date that:

(a) A pleading, motion, or other document is received by the Executive Director [~~Commissioner~~] at the Office [~~Department~~] of Workers' Claims in Frankfort, Kentucky, except:

1. Final orders and opinions of administrative law judges, which shall be deemed "filed" three (3) days after the date set forth on the final order or opinion; and

2. Documents delivered to the offices of the Office [~~Department~~] of Workers' Claims after the office is closed at 4:30 p.m. or on the weekend which shall be deemed filed the following business day; or

(b) A document is transmitted by United States registered (not certified) or express mail, or by other recognized mail carriers, and the date the transmitting agency receives the document from the sender as noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing.

(6) "Employer" means individuals, partnerships, voluntary associations and corporations.

(7) "Employer who has not secured payment of compensation" means any employer who employs an employee as defined by KRS 342.640 but has not complied with KRS 342.340.

(8) "Latest available edition" means that edition of the "Guides to the Evaluation of Permanent Impairment" which the executive director [~~commissioner~~] has certified as being generally available to the Office [~~Department~~], attorneys, and medical practitioners, by posting prominently at the Office's [~~Department's~~] hearing sites the

1 date upon which a particular edition of the "Guides to the Evaluation of Permanent
2 Impairment" is applicable for purposes of KRS Chapter 342.

3 (9) "Special defenses" means defenses that shall be raised by "special answer"
4 filed in accordance with Section 5(2)(d) of this administrative regulation.

5 Section 2. Parties. (1) The party making the original application for resolution of
6 claim pursuant to KRS 342.270 or 342.316 shall be designated as "plaintiff". Adverse
7 parties shall be designated as "defendants".

8 (2) All persons shall be joined as plaintiffs in whom any right to any relief
9 pursuant to KRS Chapter 342, arising out of the same transaction and occurrence, is
10 alleged to exist. If a person refuses to join as a plaintiff, that person shall be joined as a
11 defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

12 (3)(a) All persons shall be joined as defendants against whom the ultimate right
13 to relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the
14 alternative. An administrative law judge shall order, upon a proper showing, that a party
15 be joined or dismissed.

16 (b) The Special Fund may be joined as a defendant in accordance with the
17 appropriate statutory provisions for claims in which the injury date or date of last
18 exposure occurred before December 12, 1996.

19 (c) Joinder shall be sought by motion as soon as practicable after legal grounds
20 for joinder are known. Notice of joinder and a copy of the claim file shall be served in the
21 manner ordered by the administrative law judge.

1 Section 3. Pleadings. (1) An application for resolution of claim and all other
2 pleadings shall be typewritten and submitted in accordance with this administrative
3 regulation.

4 (a) For an injury claim, an applicant shall submit a completed Form 101,
5 Application for Resolution of Injury Claim.

6 (b) For an occupational disease claim other than coal workers' pneumoconiosis,
7 an applicant shall submit a completed Form 102, Application for Resolution of
8 Occupational Disease Claim.

9 (c) For a hearing loss claim, an applicant shall submit a completed Form 103,
10 Application for Resolution of Hearing Loss Claim.

11 (2) An application for resolution of claim shall be filed with sufficient copies for
12 service on all parties. The executive director ~~[commissioner]~~ shall make service by first
13 class mail. Incomplete applications may be rejected and returned to the applicant. If the
14 application is refiled in proper form within twenty (20) days of the date it was returned,
15 the filing shall relate back to the date the application was first received by the executive
16 director ~~[commissioner]~~. Otherwise, the date of second receipt shall be the filing date.

17 (3) All pleadings shall be served upon the executive director ~~[commissioner]~~ and
18 shall be served upon all other parties by mailing a copy to the other parties or, if
19 represented, to that representative, at the party's or representative's last known
20 address. A certificate of service indicating the method and date of service and signed by
21 the party shall appear on the face of the pleading. Notices of deposition and physical
22 examination shall be served upon the parties and shall not be filed with the executive
23 director ~~[commissioner]~~.

1 (4) After the application for resolution has been assigned to an administrative law
2 judge, subsequent pleadings shall include, within the style of the claim and immediately
3 before the claim number, "Before administrative law judge (name)". Upon consolidation
4 of claims, the most recent claim number shall be listed first.

5 (5)(a) All documents involved in an appeal to the Workers' Compensation Board
6 shall include the language "Before Workers' Compensation Board" before the claim
7 number within the style of the claim.

8 (b) Parties shall insert the language "Appeals Branch" or "Workers'
9 Compensation Board" on the outside of the envelope containing documents involved in
10 an appeal.

11 Section 4. Motions. (1) The party filing a motion shall tender a proposed order
12 granting the relief requested.

13 (2) The party filing a motion may file a brief memorandum supporting the motion
14 and opposing parties may file brief memoranda in reply. Further memoranda (for
15 example, reply to response) shall not be filed.

16 (3) Every motion and response, the grounds of which depend upon the existence
17 of facts not in evidence, shall be supported by affidavits demonstrating the facts.

18 (4) Every motion, the grounds of which depend upon the existence of facts which
19 the moving party believes are shown in the evidence or are admitted by the pleadings,
20 shall make reference to the place in the record where that evidence or admission is
21 found.

1 (5) A motion, other than to reopen pursuant to KRS 342.125 or for interlocutory
2 relief, shall be considered ten (10) days after the date of filing. A response shall be
3 considered if filed on or before the tenth day after the filing of the motion.

4 (6)(a) A motion to reopen shall be accompanied by as many of the following
5 items as may be applicable:

6 1. A current medical release Form 106 executed by the plaintiff;

7 2. An affidavit evidencing the grounds to support reopening;

8 3. A current medical report showing a change in disability established by
9 objective medical findings;

10 4. A copy of the opinion and award, settlement, voluntary agreed order or agreed
11 resolution sought to be reopened;

12 5. An affidavit certifying that a previous motion to reopen has not been made by
13 the moving party, or if one (1) has previously been made, the date on which the
14 previous motion was filed;

15 6. A designation of evidence from the original record specifically identifying the
16 relevant items of proof which are to be considered as part of the record during
17 reopening; or

18 7. A certification of service that the motion was served on all parties as well as
19 counsel for the parties.

20 (b)1. A designation of evidence made by a party shall list only those items of
21 evidence from the original record that are relevant to the matters raised on reopening.

22 2. The burden of completeness of the record shall rest with the parties to include
23 so much of the original record, up to and including the award or order on reopening, as

1 is necessary to permit the administrative law judge to compare the relevant evidence
2 that existed in the original record with all subsequent evidence submitted by the parties.

3 3. Except for good cause shown at the time of the filing of the designation of
4 evidence, a party shall not designate the entire original record from the claim for which
5 reopening is being sought.

6 (c)1. A motion to reopen shall not be considered until twenty-five (25) days after
7 the date of filing.

8 2. Any response shall be filed within twenty (20) days of filing the motion to
9 reopen.

10 3. A response may contain a designation of evidence specifically identifying
11 evidence from the original record not already listed by the moving party that is relevant
12 to matters raised in a response.

13 (d) Any party may use the following forms provided by the Office [~~Department~~] for
14 motions to reopen:

15 1. Form MTR-1, Motion to Reopen by Employee;

16 2. Form MTR-3, Motion to Reopen by Defendant; and

17 3. Form MTR-2, Motion to Reopen KRS 342.732 Benefits.

18 (7) A motion for allowance of a plaintiff's attorney fee shall:

19 (a) Be made within thirty (30) days following the finality of the award, settlement
20 or agreed resolution upon which the fee request is based;

21 (b) Be served upon the adverse parties and the attorney's client;

22 (c) Set forth the fee requested and mathematical computations establishing that
23 the request is within the limits set forth in KRS 342.320; and

(d) Be accompanied by:

1. An affidavit of counsel detailing the extent of the services rendered and the time expended;

2. A signed and dated Form 109 as required by KRS 342.320(5); and

3. A copy of the signed and dated contingency fee contract.

(8) A motion for allowance of defendant's attorney's fee shall be:

(a) Filed within thirty (30) days following the finality of the decision; and

(b) Accompanied by an affidavit of counsel detailing:

1. The extent of the services rendered and the time expended;

2. The hourly rate and total amount to be charged; and

3. The date upon which agreement was reached for providing the legal services.

(9) The following motions relating to vocational rehabilitation training provided by the Office ~~[Department]~~ may be used by all parties:

(a) Form VRT, Petition for Vocational Rehabilitation Training; and

(b) Form WVR, Joint Motion and Agreement to Waive Vocational Rehabilitation Evaluation.

(10) If a plaintiff is deceased, a motion to substitute party and continue benefits shall be filed on Form 11.

Section 5. Application for Resolution of an Injury Claim and Response. (1) To apply for resolution of an injury claim, the applicant shall file Form 101 with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of injury;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report, which may consist of legible, hand-written notes of the treating physician, and which shall include the following:

1. A description of the injury which is the basis of the claim;

2. A medical opinion establishing a causal relationship between the work-related events or the medical condition which is the subject of the claim;

3. If a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder;

(e) Documentation substantiating the plaintiff's preinjury and postinjury wages; and

(f) Documentation establishing additional periods for which temporary total disability benefits are sought.

(2)(a) Defendant shall file a notice of claim denial or acceptance on a Form 111 - Injury and Hearing Loss within forty-five (45) days after the notice of the scheduling order or within forty-five (45) days following an order sustaining a motion to reopen a claim.

(b) If a Form 111 is not filed, all allegations of the application shall be deemed admitted.

1 (c) The Form 111 shall set forth the following:

2 1. All pertinent matters which are admitted and those which are denied;

3 2. If a claim is denied in whole or in part, a detailed summary of the basis for
4 denial;

5 3. The name of each witness whose testimony may be relevant to that denial;
6 and

7 4. A description of the physical requirements of plaintiff's job at the time of the
8 alleged injury and the name, address and telephone number of the individual
9 responsible for gathering this information for the employer and its insurer.

10 (d) In addition to the Form 111, a defendant shall file a special answer to raise
11 any special defenses in accordance with this paragraph.

12 1. A defendant may incorporate special defenses that have been timely raised in
13 the Form 111.

14 2. A "special answer" shall be filed within:

15 a. Forty-five (45) days of the scheduling order; or

16 b. Ten (10) days after discovery of facts supporting the defense if discovery could
17 not have been had earlier in the exercise of due diligence.

18 3. A special defense shall be waived if not timely raised.

19 4. A special defense shall be pleaded if the defense arises under:

20 a. KRS 342.035(3), unreasonable failure to follow medical advice;

21 b. KRS 342.165, failure to comply with safety laws;

22 c. KRS 342.316(7) or 342.335, false statement on employment application;

23 d. KRS 342.395, voluntary rejection of KRS Chapter 342;

- e. KRS 342.610(3), voluntary intoxication or self-infliction of injury;
- f. KRS 342.710(5), refusal to accept rehabilitation services; or
- g. Running of periods of limitations or repose under KRS 342.185, 342.270, 342.316, or other applicable statute.

Section 6. Application for Resolution of an Occupational Disease Claim and Response. (1) To apply for resolution of an occupational disease claim, the applicant shall file Form 102 with the following completed attachments:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of last exposure and all jobs in which plaintiff alleges exposure to the hazards of the occupational disease;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report supporting the existence of occupational disease; and

(e) Social Security earnings record release form (Form 115).

(2)(a) Defendant shall file a notice of claim denial or acceptance on a Form 111-OD:

- 1. Within forty-five (45) days after the notice of the scheduling order; and
- 2. In accordance with Section 5(2)(b), (c), and (d) of this administrative regulation.

(b) In addition to the Form 111-OD, a defendant shall file a special answer to raise any special defenses in accordance with Section 5(2)(d) of this administrative regulation.

(3) For all occupational disease and hearing loss claims, the executive director ~~[commissioner]~~ shall promptly schedule an examination pursuant to KRS 342.315 and 342.316.

Section 7. Application for Resolution of a Hearing Loss Claim and Response. (1) To apply for resolution of a hearing loss claim, the applicant shall file Form 103 with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the last date of noise exposure;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for hearing loss or ear complaints;

(c) Medical release (Form 106);

(d) One (1) medical report describing the hearing loss which is the basis of the claim and, if a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder. Medical reports required under this paragraph may consist of legible, hand-written notes of a treating physician; and

(e) Social Security earnings record release form (Form 115).

(2)(a) Defendant shall file a notice of claim denial or acceptance on a Form 111 - Injury and Hearing Loss:

1. Within forty-five (45) days after the notice of the scheduling order; and
2. In accordance with Section 5(2)(b), (c), and (d) of this administrative regulation.

(b) In addition to the Form 111 - Injury and Hearing Loss, a defendant shall file a special answer to raise any special defenses in accordance with Section 5(2)(d) of this administrative regulation.

Section 8. Discovery, Evidence, and Exchange of Records. (1) Proof taking and discovery for all parties shall begin from the date of issuance by the executive director [commissioner] of the scheduling order.

(2)(a) Plaintiff and defendants shall take proof for a period of sixty (60) days from the date of the scheduling order;

(b) After the sixty (60) day period, defendants shall take proof for an additional thirty (30) days; and

(c) After the defendant's thirty (30) day period, the plaintiff shall take rebuttal proof for an additional fifteen (15) days.

(3) During the pendency of a claim, any party obtaining or possessing a medical or vocational report or records shall serve a copy of the report or records upon all other parties within ten (10) days following receipt of those reports or records or within ten (10) days of receipt of notice if assigned to an administrative law judge.

(4) All medical reports filed with Forms 101, 102, or 103 shall be admitted into evidence without further order if:

1 (a) An objection is not filed prior to or with the filing of the Form 111; and

2 (b) The medical reports comply with Section 10 of this administrative regulation.

3 Section 9. Vocational Reports. (1) A vocational report may be filed by notice and
4 shall be admitted into evidence without further order and without the necessity of a
5 deposition, if an objection is not filed.

6 (2) Vocational reports shall be signed by the individual making the report.

7 (3) Vocational reports shall include, within the body of the report or as an
8 attachment, a statement of the qualifications of the person making the report.

9 (4) An objection to the filing of a vocational report shall:

10 (a) Be filed within ten (10) days of the filing of the notice or motion for admission;
11 and

12 (b) State the grounds for the objection with particularity.

13 (5) The administrative law judge shall rule on the objection within fifteen (15)
14 days.

15 (6) If a vocational report is admitted as direct testimony, an adverse party may
16 depose the reporting vocational witness in a timely manner as if on cross-examination
17 at its own expense.

18 Section 10. Medical Reports. (1) A party shall not introduce direct testimony from
19 more than two (2) physicians by medical report except upon a showing of good cause
20 and prior approval by an administrative law judge.

21 (2) Medical reports shall be submitted on Form 107-I (injury), Form 107-P
22 (psychological), Form 108-OD (occupational disease), Form 108-CWP (coal workers'

1 pneumoconiosis), or Form 108-HL (hearing loss), as appropriate, except that an
2 administrative law judge may permit the introduction of other reports.

3 (3) Medical reports shall be signed by the physician making the report, or be
4 accompanied by an affidavit from the physician or submitting party or representative
5 verifying the authenticity of the report.

6 (4) Medical reports shall include, within the body of the report or as an
7 attachment, a statement of qualifications of the person making the report. If the
8 qualifications of the physician who prepared the written medical report have been filed
9 with the executive director [~~commissioner~~] and the physician has been assigned a
10 medical qualifications index number, reference may be made to the physicians index
11 number in lieu of attaching qualifications.

12 (5) Narratives in medical reports shall be typewritten. Other portions, including
13 spirometric tracings, shall be clearly legible.

14 (6)(a) Upon notice, a party may file the testimony of two (2) physicians, either by
15 deposition or medical report, which shall be admitted into evidence without further order
16 if an objection is not filed.

17 (b) Objection to the filing of a medical report shall be filed within ten (10) days of
18 the filing of the notice or the motion for admission.

19 (c) Grounds for the objection shall be stated with particularity.

20 (d) The administrative law judge shall rule on the objection within fifteen (15)
21 days of filing.

1 (7) If a medical report is admitted as direct testimony, an adverse party may
2 depose the reporting physician in a timely manner as if on cross-examination at its own
3 expense.

4 Section 11. Medical Evaluations Pursuant to KRS 342.315. (1) All persons
5 claiming benefits for hearing loss or occupational disease other than coal workers'
6 pneumoconiosis shall be referred by the executive director [~~commissioner~~] for a medical
7 evaluation in accordance with contracts entered into between the executive director
8 [~~commissioner~~] and the University of Kentucky and University of Louisville medical
9 schools.

10 (2) Upon all other claims except coal workers' pneumoconiosis claims, the
11 executive director [~~commissioner~~] or an administrative law judge may direct
12 appointment by the executive director [~~commissioner~~] of a university medical evaluator.

13 (3) Upon referral for medical evaluation under this section, a party may tender
14 additional relevant medical information to the university medical school to whom the
15 evaluation is assigned. This additional information shall not be filed of record. The
16 additional medical information shall be:

17 (a) Submitted to the university within fourteen (14) days following an order for
18 medical evaluation pursuant to KRS 342.315;

19 (b) Submitted by way of medical reports, notes, or depositions;

20 (c) Clearly legible;

21 (d) Indexed;

22 (e) Furnished in chronological order;

1 (f) Timely furnished to all other parties within ten (10) days following receipt of the
2 medical information; and

3 (g) Accompanied by a summary that is filed of record and served upon all parties.

4 The summary shall:

5 1. Identify the medical provider;

6 2. Include the date of medical services; and

7 3. Include the nature of medical services provided.

8 (4) Upon the scheduling of an evaluation, the executive director [~~commissioner~~]
9 shall provide notice to all parties and the employer shall forward to the plaintiff
10 necessary travel expenses as required by KRS 342.315(4). Upon completion of the
11 evaluation, the executive director [~~commissioner~~] shall provide copies of the report to all
12 parties and shall file the original report in the claim record to be considered as evidence.

13 (5) The administrative law judge shall allow timely cross-examination of a
14 medical evaluator appointed by the executive director [~~commissioner~~] at the expense of
15 the moving party.

16 (6) Unjustified failure by the plaintiff to attend the scheduled medical evaluation
17 may be grounds for dismissal, payment of a no-show fee, sanctions, or all of the above.

18 (7) Failure by the employer or its insurance carrier to pay travel expenses within
19 seven (7) days of notification of a scheduled medical evaluation may be grounds for
20 imposition of sanctions.

21 Section 12. Interlocutory Relief. (1) During a claim, a party may seek interlocutory
22 relief through:

1 (a) Interim payment of income benefits for total disability pursuant to KRS
2 342.730(1)(a);

3 (b) Medical benefits pursuant to KRS 342.020; or

4 (c) Rehabilitation services pursuant to KRS 342.710.

5 (2) Upon motion of any party, an informal conference:

6 (a) Shall be held to review the plaintiff's entitlement to interlocutory relief; and

7 (b) May be held telephonically.

8 (3) Any response to a request for interlocutory relief shall be served within twenty
9 (20) days from the date of the request and thereafter, the request shall be ripe for a
10 decision.

11 (4)(a) Entitlement to interlocutory relief shall be shown by means of affidavit,
12 deposition, or other evidence of record demonstrating the requesting party:

13 1. Is eligible under KRS Chapter 342; and

14 2. Will suffer irreparable injury, loss or damage pending a final decision on the
15 application.

16 (b) Rehabilitation services may be ordered while the claim is pending upon
17 showing that immediate provision of services will substantially increase the probability
18 that the plaintiff will return to work.

19 (5) If interlocutory relief is awarded in the form of income benefits, the application
20 shall be placed in abeyance unless a party shows irreparable harm will result. The
21 administrative law judge may require periodic reports as to the physical condition of the
22 plaintiff. Upon motion and a showing of cause, or upon the administrative law judge's

own motion, interlocutory relief shall be terminated and the claim removed from abeyance.

(6) An attorney's fee in the amounts authorized by KRS 342.320 that does not exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.

(7) A party seeking interlocutory relief may use the following forms:

(a) Motion for interlocutory relief, Form MIR-1;

(b) Affidavit for payment of medical expenses, Form MIR-2;

(c) Affidavit for payment of temporary total disability, Form MIR-3; and

(d) Affidavit regarding rehabilitation services, Form MIR-4.

Section 13. Benefit Review Conferences. (1) The purpose of the benefit review conference shall be to expedite the processing of the claim and to avoid if possible the need for a hearing.

(2) The benefit review conference shall be an informal proceeding.

(3) The date, time, and place for the benefit review conference shall be stated on the scheduling order issued by the executive director ~~[commissioner]~~.

(4) The plaintiff and his or her representative, the defendant or its representative, and the representatives of all other parties shall attend the benefit review conference.

(5) If the defendant is insured or a qualified self-insured, a representative of the carrier with settlement authority shall be present or available by telephone during the benefit review conference.

1 (6) The administrative law judge may upon motion waive the plaintiff's
2 attendance at the benefit review conference for good cause shown.

3 (7) A transcript of the benefit review conference shall not be made.

4 (8) Representatives of all parties shall have authority to resolve disputed issues
5 and settle the claim at the benefit review conference.

6 (9)(a) Defendant shall provide a completed Form AWW-1, Average Weekly
7 Wage Form.

8 (b) Plaintiff shall bring copies of unpaid medical bills and documentation of out-of-
9 pocket expenses including travel for medical treatments.

10 (c) Each defendant shall bring copies of disputed medical bills and medical
11 expenses.

12 (10) Ten (10) days before the benefit review conference, the parties shall
13 exchange final stipulations and lists of known witnesses and exhibits that:

14 (a) Name each proposed witness;

15 (b) Summarize the anticipated testimony of each witness;

16 (c) For medical witnesses, include in the summary:

17 1. The diagnosis reached;

18 2. Clinical findings and results of diagnostic studies upon which the diagnosis is
19 based;

20 3. The functional impairment rating assessed by the witness; and

21 4. A description of any work-related restrictions imposed; and

22 (d) Identify any exhibits.

23 (11) At the benefit review conference, the parties shall:

1 (a) Attempt to resolve controversies and disputed issues;

2 (b) Narrow and define disputed issues; and

3 (c) Facilitate a prompt settlement.

4 (12) A party seeking postponement of a benefit review conference shall file a
5 motion at least fifteen (15) days prior to the date of the conference and shall
6 demonstrate good cause for the postponement.

7 (13) If at the conclusion of the benefit review conference the parties have not
8 reached agreement on all the issues, the administrative law judge shall:

9 (a) Prepare a summary stipulation of all contested and uncontested issues which
10 shall be signed by representatives of the parties and by the administrative law judge;
11 and

12 (b) Schedule a final hearing.

13 (14) Only contested issues shall be the subject of further proceedings.

14 (15) Upon motion with good cause shown, the administrative law judge may
15 order that additional discovery or proof be taken between the benefit review conference
16 and the date of the hearing and may limit the number of witnesses to be presented at
17 hearing.

18 Section 14. Evidence - Rules Applicable. (1) The Rules of Evidence prescribed
19 by the Kentucky Supreme Court shall apply in all proceedings before an administrative
20 law judge except as varied by specific statute and this administrative regulation.

21 (2) Any party may file as evidence before the administrative law judge pertinent
22 material and relevant portions of hospital, educational, Office of Vital Statistics, Armed
23 Forces, Social Security, and other public records. An opinion of a physician which is

expressed in these records shall not be considered by an administrative law judge in violation of the limitation on the number of physician's opinions established in KRS 342.033.

Section 15. Extensions of Proof Time. (1) An extension of time for producing evidence may be granted upon showing of circumstances that prevent timely introduction.

(2) A motion for extension of time shall be filed no later than five (5) days before the deadline sought to be extended.

(3) The motion or supporting affidavits shall set forth:

(a) The efforts to produce the evidence in a timely manner;

(b) Facts which prevented timely production; and

(c) The date of availability of the evidence, the probability of its production, and the materiality of the evidence.

(4) In the absence of compelling circumstances, only one (1) extension of thirty (30) days shall be granted to each side for completion of discovery or proof by deposition.

(5) The granting of an extension of time for completion of discovery or proof shall:

(a) Enlarge the time to all:

1. Plaintiffs if the extension is granted to a plaintiff; and

2. Defendants if an extension is granted to a defendant; and

(b) Extend the time of the adverse party automatically except if the extension is for rebuttal proof.

1 Section 16. Stipulation of Facts. (1) Refusal to stipulate facts which are not
2 genuinely in issue shall warrant imposition of sanctions as established in Section 24 of
3 this administrative regulation. An assertion that a party has not had sufficient
4 opportunity to ascertain relevant facts shall not be considered "good cause" in the
5 absence of due diligence.

6 (2) Upon cause shown, a party may be relieved of a stipulation if the motion for
7 relief is filed at least ten (10) days prior to the date of the hearing, or as soon as
8 practicable after discovery that the stipulation was erroneous.

9 (3) Upon granting relief from a stipulation, the administrative law judge may grant
10 a continuance of the hearing and additional proof time.

11 Section 17. Discovery and Depositions. (1) Discovery and the taking of
12 depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive,
13 except for Civil Rules 27, 33, and 36 which shall not apply to practice before the
14 administrative law judges or the board.

15 (2) Depositions may be taken by telephone if the reporter administering the oath
16 to the witness and reporting the deposition is physically present with the witness at the
17 time the deposition is given. Notice of a telephonic deposition shall relate the following
18 information:

19 (a) That the deposition is to be taken by telephone;

20 (b) The address and telephone number from which the call will be placed to the
21 witness;

22 (c) The address and telephone number of the place where the witness will
23 answer the deposition call; and

1 (d) Opposing parties may participate in the deposition either at the place where
2 the deposition is being given, at the place the telephone call is placed to the witness, or
3 by conference call. If a party elects to participate by conference call, that party shall
4 contribute proportionate costs of the conference call.

5 (3) The executive director [~~commissioner~~] shall establish a medical qualifications
6 index.

7 (a) An index number shall be assigned to a physician upon the filing of the
8 physician's qualifications.

9 (b) Any physician who has been assigned an index number may offer the
10 assigned number in lieu of stating qualifications.

11 (c) Qualifications shall be revised or updated by submitting revisions to the
12 executive director [~~commissioner~~].

13 (d) A party may inquire further into the qualifications of a physician.

14 Section 18. Hearings. (1) At the hearing, the parties shall present proof
15 concerning contested issues. If the plaintiff or plaintiff's counsel fails to appear, the
16 administrative law judge may dismiss the case for want of prosecution, or if good cause
17 is shown, the hearing may be continued.

18 (2) At the conclusion of the hearing, the claim shall be taken under submission
19 immediately or briefs may be ordered.

20 (3) Briefs shall not exceed fifteen (15) pages in length. Reply briefs shall be
21 limited to five (5) pages. Permission to increase the length of a brief shall be sought by
22 motion.

1 (4) The administrative law judge may announce his decision at the conclusion of
2 the hearing or shall defer decision until rendering a written opinion.

3 (5) A decision shall be rendered no later than sixty (60) days following the
4 hearing.

5 (6) The time of filing a petition for reconsideration or notice of appeal shall not
6 begin to run until after the "date of filing" of the written opinion.

7 (7) An opinion or other final order of an administrative law judge shall not be
8 deemed final until the administrative law judge has certified that a certification of mailing
9 was sent to:

10 (a) An attorney who has entered an appearance for a party; or

11 (b) The party if an attorney has not entered an appearance.

12 (8) The parties with approval of the administrative law judge may waive a final
13 hearing. Waiver of a final hearing shall require agreement of all parties and the
14 administrative law judge. The claim shall be taken under submission as of the date of
15 the order allowing the waiver of hearing. A decision shall be rendered no later than sixty
16 (60) days following the date of the order allowing the waiver of hearing.

17 Section 19. Petitions for Reconsideration. (1) If applicable, a party shall file a
18 petition for reconsideration within fourteen (14) days of the filing of a final order or award
19 of an administrative law judge, clearly stating the patent error which the petitioner seeks
20 to have corrected and setting forth the authorities upon which petitioner relies. The party
21 filing the petition for reconsideration shall tender a proposed order granting the relief
22 requested.

1 (2) A response shall be served within ten (10) days after the date of filing of the
2 petition.

3 (3) The administrative law judge shall act upon the petition within ten (10) days
4 after the response is due.

5 Section 20. Benefit Calculations for Settlements. (1) For computing lump sum
6 settlements, the employer shall utilize the prescribed discount rate for its weeks of
7 liability only, not for the entire award period. A discount shall not be taken on past due
8 benefits by the employer or Special Fund. Lump sum settlements shall be calculated as
9 follows:

10 (a) Determine the entire lump sum liability:

11 1. Compute the remaining weeks of liability in the award by subtracting the
12 number of weeks past due from the entire number of weeks in the award;

13 2. Discount the number of weeks remaining in the award at the prescribed
14 discount rate;

15 3. Multiply the weekly benefit rate by the discounted number of weeks remaining
16 (subparagraph 2 of this paragraph) in the award. This product shall equal the entire
17 future lump sum liability for the award; and

18 4. Add the amount of past due benefits to the future lump sum liability award
19 (subparagraph 3 of this paragraph). The sum shall represent the entire lump sum value
20 of the award.

21 (b) Determine the employer's lump sum liability as follows:

22 1. The employer's future liability shall be computed by determining its total weeks
23 of liability less the number of weeks of liability past due.

1 2. The number of weeks remaining shall be discounted at the prescribed discount
2 rate and multiplied by the amount of the weekly benefit.

3 3. Multiply the number of past due weeks by the amount of the weekly benefit.

4 4. The employer's entire liability for a lump sum payment shall be determined by
5 adding the results of paragraph (b)2 and 3 of this subsection.

6 (c) Determine the Special Fund's portion of the lump sum liability by subtracting
7 the value of the employer's liability in lump sum (paragraph (b) of this subsection) from
8 the entire value of the lump sum settlement (paragraph (a) of this subsection). The
9 remainder shall be the Special Fund's lump sum liability.

10 (2) If the employer settles its liability for income benefits with the employee for a
11 lump sum payment and a determination is made of the Special Fund's liability, the
12 Special Fund's portion of income benefits shall be paid commencing with the date of
13 approval of the employer's settlement and continuing for the balance of the
14 compensable period.

15 (3) In computing settlements involving periodic payments, the employer shall pay
16 its liability over the initial portion of the award, based on the number of weeks its liability
17 bears to the entire liability for the claim. The Special Fund shall make all remaining
18 payments for the balance of the compensable period.

19 (4) Pursuant to KRS 342.265, election by the Special Fund to settle on the same
20 terms as the employer shall mean the Special Fund agrees to settle in the same
21 manner as the employer in either a discounted lump sum or in periodic payments based
22 upon its proportionate share of the permanent disability percentage paid by the
23 employer. "Same terms" shall not include any additional payments the employer

1 included for buy out of medical expenses, temporary total disability, rehabilitation, or
2 other benefits for which the Special Fund is not liable.

3 (5) Parties involved in a lump-sum settlement of future periodic payments shall
4 use the discount factor computed in accordance with KRS 342.265(3).

5 Section 21. Review of Administrative Law Judge Decisions. (1) General.

6 (a) Pursuant to KRS 342.285(1), decisions of administrative law judges shall be
7 subject to review by the Workers' Compensation Board in accordance with the
8 procedures set out in this administrative regulation.

9 (b) Parties shall insert the language "Appeals Branch" or "Workers'
10 Compensation Board" on the outside of an envelope containing documents filed in an
11 appeal to the board.

12 (2) Time and format of notice of appeal.

13 (a) Within thirty (30) days of the date a final award, order, or decision rendered
14 by an administrative law judge pursuant to KRS 342.275(2) is filed, any party aggrieved
15 by that award, order, or decision may file a notice of appeal to the Workers'
16 Compensation Board.

17 (b) As used in this section, a final award, order or decision shall be determined in
18 accordance with Civil Rule 54.02(1) and (2).

19 (c) The notice of appeal shall:

- 20 1. Denote the appealing party as the petitioner;
21 2. Denote all parties against whom the appeal is taken as respondents;
22 3. Name the administrative law judge who rendered the award, order, or decision
23 appealed from as a respondent;

1 4. If appropriate pursuant to KRS 342.120 or 342.1242, name the director of the
2 workers' compensation funds as a respondent; and

3 5. Include the claim number.

4 (d) Cross-appeal.

5 1. Any party may file a cross-appeal through notice of cross-appeal filed within
6 ten (10) days after the notice of appeal is served.

7 2. A cross-appeal shall designate the parties as stated in the notice of appeal.

8 (e) Failure to file the notice within the time allowed shall require dismissal of the
9 appeal.

10 (f) The executive director [~~commissioner~~] shall issue an acknowledgement to all
11 parties of the filing of a notice of appeal or cross-appeal.

12 (3) Number of copies and format of petitioner's brief.

13 (a) The petitioner's brief shall be filed within thirty (30) days of the filing of the
14 notice of appeal.

15 (b) An original and two (2) copies of the petitioner's brief shall be filed with the
16 Executive Director [~~Commissioner~~] of the Office [~~Department~~] of Workers' Claims.

17 (c) The petitioner's brief shall conform in all respects to Civil Rule 7.02(4).

18 (4) Petitioner's brief. The petitioner's brief shall designate the parties as petitioner
19 (or petitioners) and respondent (or respondents) and shall be drafted in the following
20 manner:

21 (a)1. The name of each petitioner and each respondent shall be included in the
22 brief.

23 2. The petitioner shall specifically designate as respondents all adverse parties.

1 3. The administrative law judge who rendered the award, order, or decision
2 appealed from shall be named as a respondent.

3 (b) The workers' compensation claim number, or numbers, shall be set forth in all
4 pleadings before the Workers' Compensation Board.

5 (c) The petitioner's brief shall state the date of entry of the final award, order, or
6 decision by the administrative law judge.

7 (d) The petitioner's brief shall state whether any matters remain in litigation
8 between the parties in any forum or court other than those for which an appeal is being
9 sought.

10 (e) The petitioner's brief shall include a "Need for Oral Argument" designating
11 whether the party requests an argument to be heard orally before the board and, if so, a
12 brief statement setting out the reason or reasons for the request.

13 (f) The petitioner's brief shall include a "Statement of Benefits Pending Review"
14 which shall set forth whether the benefits designated to be paid by the award, order, or
15 decision for which review is being sought have been instituted pursuant to KRS
16 342.300.

17 (g) The organization and contents of the petitioner's brief for review shall be as
18 follows:

19 1. A brief "Introduction" shall indicate the nature of the case.

20 2. A "Statement of Points and Authorities" shall set forth, succinctly and in the
21 order in which they are discussed in the body of the argument, the petitioner's
22 contentions with respect to each issue of law on which he relies for a reversal, listing
23 under each the authority cited on that point and the respective pages of the brief on

1 which the argument appears and on which the authorities are cited. This requirement
2 may be eliminated for briefs of five (5) or less pages.

3 3. A "Statement of the Case" shall consist of a chronological summary of the
4 facts and procedural events necessary to an understanding of the issues presented by
5 the appeal, with ample reference to the specific pages of the record supporting each of
6 the statements narrated in the summary.

7 4. An "Argument" shall:

8 a. Conform with the statement of points and authorities, with ample supportive
9 references to the record and citations of authority pertinent to each issue of law; and

10 b. Contain, at the beginning of the argument, a statement with reference to the
11 record showing whether the issue was properly preserved for review and, if so, in what
12 manner.

13 5. A "Conclusion" shall set forth the specific relief sought from the board.

14 6. An "Appendix" shall contain:

15 a. Copies of the final award, order, or decision of the administrative law judge
16 from which review is being sought;

17 b. Any petitions for reconsideration filed by the parties pursuant to KRS 342.281;

18 c. The administrative law judge's order addressing any petitions for
19 reconsideration;

20 d. Copies of cases cited from federal courts and foreign jurisdictions, if any, upon
21 which reliance is made; and

22 e. Copies of prior board opinions or nonfinal or unpublished opinions of the Court
23 of Appeals or Supreme Court in accordance with subsection (9) of this section.

1 (5) Respondent's brief, combined brief, or cross-petitioner's brief.

2 (a) Each respondent shall file an original and two (2) copies of a brief, combined
3 brief if cross-petition or cross-petitioner's brief, within thirty (30) days of the date on
4 which the petitioner's brief was filed with the Executive Director [~~Commissioner~~] of the
5 Office [~~Department~~] of Workers' Claims.

6 (b) The respondent's brief shall include a "Need for Oral Argument" similar to the
7 statement required of the petitioner by subsection (4)(e) of this section.

8 (c) The respondent's brief shall include a "Statement of Benefits Pending
9 Review" similar to the statement required of the petitioner by subsection (4)(f) of this
10 section.

11 (d) Respondent's counter-argument shall follow the organization and content of
12 the petitioner's brief as set forth in subsection (4)(g) of this section.

13 (6) Reply brief.

14 (a) If applicable, the petitioner may file a reply brief within ten (10) days after the
15 date on which the respondent's brief was served or due, whichever is earlier.

16 (b) The organization and contents of the reply brief shall be as provided in Civil
17 Rule 76.12(4)(e), except that an index, or contents page shall not be required.

18 (c) If a cross-appeal has been filed, the cross-petitioner's reply brief may be
19 served within ten (10) days after the date on which the last cross-respondent's brief was
20 served or due, whichever is earlier.

21 (7) Certification. The petitioner's brief, respondent's brief, and reply brief shall be
22 signed by each party or his counsel and that signature shall constitute a certification that
23 the statements contained in the document are true and made in good faith.

1 (8) Service of notice of appeal, cross-appeal, petitioner's brief, respondent's brief,
2 and reply briefs on adverse parties.

3 (a) Before filing a notice of appeal, cross-appeal, or any brief with the Executive
4 Director [~~Commissioner~~] of the Office [~~Department~~] of Workers' Claims, a party shall
5 serve, in the manner provided by Civil Rule 5.02, a copy of the document on each
6 adverse party.

7 (b) Every brief filed in an appeal to the Workers' Compensation Board shall bear,
8 on the front cover, a signed statement, in accordance with Civil Rule 5.03 by the
9 attorney or party that service has been made as required by paragraph (a) of this
10 subsection. The statement shall identify by name each person served.

11 (c) The name of each attorney submitting a document to the Workers'
12 Compensation Board with a current address and telephone number shall appear
13 following its "conclusion".

14 (d) If the respondent is also a cross-petitioner, the respondent may file a
15 combined brief or separate cross-petitioner's brief which shall address issues raised by
16 the cross-appeal.

17 (e) If a separate cross-petitioner's brief is filed, the format shall be the same as a
18 respondent's brief.

19 (9) Form of citations.

20 (a) All citations of Kentucky statutes and reported decisions of the Court of
21 Appeals and Supreme Court shall conform to the requirements of Civil Rule 76.12(4)(g).

22 (b) If a party believes that a prior decision of the board or an unpublished
23 decision by the Court of Appeals or Supreme Court has precedential value in relation to

1 a material issue in the case being reviewed and there is no published opinion that would
2 serve as well, that decision may be cited if the party serves a copy on all other parties
3 and the board.

4 (c) Service of an unpublished decision shall be accomplished by including a copy
5 of the decision in the appendix for a brief filed in an appeal to the board.

6 (d) Citations for prior decisions of the board or unpublished decisions of the Court
7 of Appeals or Supreme Court shall include the style of the case, the appropriate claim or
8 case number, and the date the decision was rendered.

9 (10) Number of pages.

10 (a) The petitioner's brief and the respondent's brief shall be limited to twenty (20)
11 pages each.

12 (b) Reply briefs shall be limited to five (5) pages.

13 (c) Combined briefs shall be limited to twenty-five (25) pages.

14 (d) The parties shall make every effort to comply with the above page limitations.

15 (e) Permission to increase the length of a brief shall be sought by motion, but
16 shall only be granted upon a showing of good cause.

17 (11) Sanctions. Failure of a party to file a brief conforming to the requirements of
18 this administrative regulation or failure of a party to timely file a response may be
19 grounds for the imposition of one (1) or more of the following sanctions:

20 (a) Affirmation or reversal of the final order;

21 (b) Rejection of a brief that does not conform as to organization or content, with
22 leave to refile in proper form within ten (10) days of the date returned. If timely refileing
23 occurs, the filing shall date back to the date of the original filing;

1 (c) Striking of an untimely response;

2 (d) A fine of not more than \$500; or

3 (e) Dismissal.

4 (12) Motions.

5 (a) Except for a brief, a motion or pleading shall require the original to be filed
6 with the Executive Director [~~Commissioner~~] of the Office [~~Department~~] of Workers'
7 Claims.

8 (b) The style of the case, including the claim number and title of the motion or
9 pleading, shall appear on the first page of the motion or pleading.

10 (c) The party filing a motion may file a brief memorandum supporting the motion
11 and opposing parties may file brief memoranda in response. To be considered, a
12 response shall be filed within ten (10) days of the motion. Further responses shall not
13 be filed.

14 (d) Every motion and response, the grounds of which depend upon the existence
15 of facts not in evidence, shall be supported by affidavits demonstrating those facts.

16 (e) Every motion and response, the grounds of which depend upon the existence
17 of facts which the moving or responding party believes are shown in the evidence or are
18 admitted by the pleadings, shall make reference to the place in the record where that
19 evidence or admission is found.

20 (f) Before filing a motion or pleading with the Executive Director [~~Commissioner~~]
21 of the Office [~~Department~~] of Workers' Claims, a party shall serve, in the manner
22 provided by Civil Rule 5.02, a copy of the document on each adverse party.

1 (g) The filing of a motion to dismiss an appeal shall stay the remaining time for
2 the filing of a responsive pleading. If the petitioner's brief has been previously filed and a
3 motion to dismiss has been overruled, the respondent shall have fifteen (15) days from
4 the order to file a respondent's brief.

5 (h) Except for motions that call for final disposition of an appeal, any board
6 member designated by the chairman may dispose of a motion. An intermediate order
7 may be issued on the signature of any board member.

8 (13) Oral arguments.

9 (a) Upon motion of a party or upon the board's own motion, the board may order
10 an oral argument on the merits in a case appealed from a decision, award or order of an
11 administrative law judge.

12 (b) Oral arguments shall occur on a date and at a time and location specified by
13 the board.

14 (c) Appeals designated for oral argument shall be held in abeyance and all
15 subsequent appeal time in the case shall be calculated from the date of the oral
16 argument.

17 (14) Continuation of benefits pending appeal.

18 (a) Benefits awarded by an administrative law judge which are not contested
19 shall be paid during the pendency of an appeal. A motion requesting the payment of
20 these benefits shall not be required. Uncontested benefits shall include income benefits
21 at an amount lesser than what was awarded if the issue on appeal addresses the
22 amount of benefits to be awarded as opposed to the entitlement to income benefits.

1 (b) Upon the motion of a party pursuant to KRS 342.300, the board may order
2 payment of benefits pending appeal in conformity with the award, decision, or order
3 appealed from.

4 (c) Entitlement to relief pursuant to KRS 342.300 shall be granted upon motion
5 establishing that:

6 1. The probability of the existence in fact of:

7 a. Financial loss;

8 b. Privation, suffering, or adversity resulting from insufficient income; or

9 c. Detriment to the moving party's property or health if payment of benefits is not
10 instituted; and

11 2. There exists a reasonable likelihood that the moving party will prevail on
12 appeal.

13 (d) Any response to a motion for continuation of an award pending appeal shall
14 be served within ten (10) days from the date of the request and, thereafter, the request
15 shall be ripe for a decision.

16 (e) Entitlement to relief by the moving party and responses shall be shown by:

17 1. Affidavit if the grounds for the motion or response depend upon the existence
18 of facts not in evidence; or

19 2. Supporting memorandum citing to evidence existing within the record and
20 making reference to the place in the record where that evidence is found.

21 (15) Decisions.

22 (a) The board shall:

1 1. Enter its decision affirming, modifying, or setting aside the order appealed
2 from; or

3 2. Remand the claim to an administrative law judge for further proceedings.

4 (b) Motions for reconsideration shall not be permitted.

5 (c) The decision of the administrative law judge shall be affirmed if:

6 1. A board member is unable to sit on a decision; and

7 2. The remaining two (2) board members cannot reach an agreement on a final
8 disposition.

9 (16) Appeal from board decisions. If applicable, pursuant to KRS 342.290 the
10 decision of the board shall be appealed to the Kentucky Court of Appeals as provided in
11 Civil Rule 76.25.

12 Section 22. Coverage - Insured Status. Upon the filing of an application for
13 resolution of claim, the executive director [~~commissioner~~] shall ascertain whether the
14 employer or any other person against whom a claim is filed and who is not exempted by
15 KRS 342.650 has secured payment of compensation by obtaining insurance coverage
16 or qualifying as a self-insurer pursuant to KRS 342.340. If an employer does not have
17 insurance coverage or qualify as a self-insurer, the executive director [~~commissioner~~]
18 shall notify the administrative law judge and all parties by service of a certification of no
19 coverage.

20 Section 23. Withdrawal of Records. (1) A portion of any original record of the
21 Office [~~Department~~] shall not be withdrawn except upon an order of the executive
22 director [~~commissioner~~], an administrative law judge, or a member of the board.

1 (2)(a) All physical exhibits, including x-rays, shall be disposed of sixty (60) days
2 after the order resolving the claim has become final except x-rays filed in coal workers'
3 pneumoconiosis claims which shall be returned to the party who filed the x-ray.

4 (b) A party filing an exhibit may make arrangements to claim an exhibit prior to
5 that time.

6 (c)1. If an unclaimed exhibit has no money value, it shall be destroyed.

7 2. If an unclaimed exhibit has a value of more than \$100, it shall be sold as
8 surplus property.

9 3. If an unclaimed exhibit has a value of less than \$100, it shall be donated to the
10 appropriate state agency.

11 4. If an unclaimed exhibit has historic value, it shall be sent to the state archives.

12 Section 24. Sanctions. (1) Pursuant to KRS 342.310, an administrative law judge
13 or the board may assess costs upon determination that proceedings have been brought,
14 prosecuted, or defended without reasonable grounds.

15 (2) A sanction may be assessed against an offending attorney or representative
16 rather than against the party.

17 (3) If a party is a governmental agency and attorney's fees are assessed, the
18 fees shall include fees for the services of an attorney in public employment, measured
19 by the reasonable cost of similar services had a private attorney been retained.

20 (4) Failure of a party to timely file a pleading or document or failure to comply
21 with the procedures required by this administrative regulation may be treated by an
22 administrative law judge or the board as prosecuting or defending without reasonable
23 grounds.

1 Section 25. Payment of Compensation from Uninsured Employers' Fund. (1)

2 Payment from the Uninsured Employers' Fund of compensation shall be made upon the
3 determination by an administrative law judge that the responsible employer failed to
4 secure payment of compensation as provided by KRS 342.340; and

5 (a) Thirty (30) days have expired since the finality of an award or issuance of an
6 interlocutory relief order and a party in interest certifies the responsible employer has
7 failed to initiate payments in accordance with that award;

8 (b) Upon showing that the responsible employer has filed a petition under any
9 section of the Federal Bankruptcy Code; or

10 (c) The plaintiff or any other party in interest has filed in the circuit court of the
11 county where the injury occurred an action pursuant to KRS 342.305 to enforce
12 payment of the award against the uninsured employer, and there has been default in
13 payment of the judgment by the employer.

14 (2) The plaintiff may by motion and affidavit demonstrate compliance with this
15 section and request an administrative law judge to order payment from the Uninsured
16 Employers' Fund in accordance with KRS 342.760.

17 (3) This section shall not be construed to prohibit the voluntary payment of
18 compensation by an employer, or any other person liable for the payment, who has
19 failed to secure payment of compensation as provided by KRS Chapter 342, the
20 compromise and settlement of a claim, or the payment of benefits by the Special Fund
21 or Coal Workers' Pneumoconiosis Fund.

22 (4) Form UEF-P, Motion for Payment from Uninsured Employers' Fund, provided
23 by the Office ~~[Department]~~ may be used by the employee.

1 Section 26. Forms. The Office [~~Department~~] of Workers' Claims shall not accept
2 applications or forms in use prior to the forms required by and incorporated by reference
3 in this administrative regulation. Outdated applications or forms submitted shall be
4 rejected and returned to the applicant or person submitting the form. If the application or
5 form is resubmitted on the proper form within twenty (20) days of the date it was
6 returned, the filing shall date back to the date the application or form was first received
7 by the executive director [~~commissioner~~]. Otherwise, the date of the second receipt shall
8 be the filing date.

9 Section 27. Incorporation by Reference. (1) The following material is incorporated
10 by reference:

11 (a) Form 101, "Application for Resolution of Injury Claim", (revised June 2005
12 [~~June, 2000~~]), Office [~~Department~~] of Workers' Claims;

13 (b) Form 102, "Application for Resolution of Occupational Disease Claim",
14 (revised June 2005 [~~June, 2000~~]), Office [~~Department~~] of Workers' Claims;

15 (c) Form 103, "Application for Resolution of Hearing Loss Claim", (June 2005
16 [~~January 1, 1997~~] Edition), Office [~~Department~~] of Workers' Claims;

17 (d) Form 104, "Plaintiff's Employment History", (January 1, 1997 Edition), Office
18 [~~Department~~] of Workers' Claims;

19 (e) Form 105, "Plaintiff's Chronological Medical History", (January 1, 1997
20 Edition), Office [~~Department~~] of Workers' Claims;

21 (f) Form 106, "Medical Waiver and Consent", (July 2003 Edition), Office
22 [~~Department~~] of Workers' Claims;

1 (g) Form 107-I, "Medical Report - Injury", (revised April 2005 ~~[June, 2000]~~), Office
2 ~~[Department]~~ of Workers' Claims;

3 (h) Form 107-P, "Medical Report - Psychological", (revised April 2005 ~~[June,~~
4 ~~2000]~~), Office ~~[Department]~~ of Workers' Claims;

5 (i) Form 108-OD, "Medical Report - Occupational Disease, (April 2005 ~~[January~~
6 ~~1, 1997]~~ Edition), Office ~~[Department]~~ of Workers' Claims;

7 (j) Form 108-CWP, "Medical Report - Coal Workers' Pneumoconiosis", (April
8 2005 ~~[January 1, 1997]~~ Edition), Office ~~[Department]~~ of Workers' Claims;

9 (k) Form 108-HL, "Medical Report - Hearing Loss", (revised April 2005 ~~[June,~~
10 ~~2000]~~), Office ~~[Department]~~ of Workers' Claims;

11 (l) Form 109, "Attorney Fee Election", (March 15, 1995 Edition), Office
12 ~~[Department]~~ of Workers' Claims;

13 (m) Form 110-F, "Agreement – Fatality", (revised January 2005);

14 (n) Form 110-I, "Agreement - Injury", (revised June, 2000), Office ~~[Department]~~ of
15 Workers' Claims;

16 (o) ~~(n)~~ Form 110-O, "Agreement - Occupational Disease", (revised June, 2000),
17 Office ~~[Department]~~ of Workers' Claims;

18 (p) ~~(o)~~ Form 110-CWP, "Agreement - Coal Workers' Pneumoconiosis", (July
19 2002 Edition), Office ~~[Department]~~ of Workers' Claims;

20 (q) ~~(p)~~ Form 111- Injury and Hearing Loss, "Notice of Claim Denial or
21 Acceptance", (January 1, 1997 Edition), Office ~~[Department]~~ of Workers' Claims;

22 (r) ~~(q)~~ Form 111-OD, "Notice of Claim Denial or Acceptance", (January 1, 1997
23 Edition), Office ~~[Department]~~ of Workers' Claims;

1 (s) ~~(r)~~ Form 115, "Social Security Release Form", (January 1, 1997 Edition); and
2 Office ~~[Department]~~ of Workers' Claims;
3 (t) ~~(s)~~ Form AWW - 1, "Average Weekly Wage Form", (January 1, 1997 Edition),
4 Office ~~[Department]~~ of Workers' Claims;
5 (u) ~~(t)~~ Lump Sum Settlement Tables, (April 15, 1997 Edition), Office
6 ~~[Department]~~ of Workers' Claims;
7 (v) ~~(u)~~ Six (6) Percent Present Value Table (May, 1997 Edition);
8 (w) ~~(v)~~ Form MIR-1, Motion for Interlocutory Relief (May 29, 1997 Edition);
9 (x) ~~(w)~~ Form MIR-2, Affidavit for Payment of Medical Expenses (May 29, 1997
10 Edition);
11 (y) ~~(x)~~ Form MIR-3, Affidavit for Payment of Temporary Total Disability (May 29,
12 1997 Edition);
13 (z) ~~(y)~~ Form MIR-4, Affidavit Regarding Rehabilitation Services (May 29, 1997
14 Edition);
15 (aa) ~~(z)~~ Form VRT, Petition for Vocational Rehabilitation Training (April 2005
16 ~~[May 29, 1997]~~ Edition);
17 (bb) ~~(aa)~~ Form MTR-1, Motion to Reopen by Employee (May 29, 1997 Edition);
18 (cc) ~~(bb)~~ Form MTR-2, Motion to Reopen KRS 342.732 Benefits (May 29, 1997
19 Edition);
20 (dd) ~~(cc)~~ Form MTR-3, Motion to Reopen by Defendant (May 29, 1997 Edition);
21 (ee) ~~(dd)~~ Form WVR, Joint Motion and Agreement to Waive Vocational
22 Rehabilitation Evaluation (April 2005 ~~[May 29, 1997]~~ Edition); and

1 (ff) [~~ee~~] Form UEF-P, Motion for Payment from Uninsured Employers' Fund
2 (April 2005 [~~May 29, 1997~~] Edition).

3 (gg) Form 11, Motion to Substitute Party and Continue Benefits (January 31,
4 2005).

5 (2) This material may be inspected, copied, or obtained, subject to applicable
6 copyright law, at the Office [~~Department~~] of Workers' Claims, Prevention Park, 657
7 Chamberlin [~~To Be Announced~~] Avenue, Frankfort, Kentucky 40601, Monday through
8 Friday, 8:00 [~~9~~] a.m. to 4:30 [~~4~~] p.m.

William P. Emrick, Executive Director
Office of Workers' Claims

Date

A public hearing on this administrative regulation shall be held on July 22, 2005, at 10:00 a.m. (EST) at the offices of the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, General Counsel
Office of Worker's Claims
Prevention Park
657 Chamberlin Avenue
Frankfort, Kentucky 40601
Telephone Number: (502) 564-5550, Ext. 4464
Fax Number: (502) 564-0681

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GROUP SELF-INSURERS

SUMMARY OF INCORPORATED MATERIAL

FILED WITH LRC JUNE 15, 2005

1. Form 101, Application for Resolution of Injury Claim (June 2005 Edition).

This form is used by claimants who are filing an injury claim with our agency. We added phone number of plaintiff, previous award of workers' compensation benefits received or prior claims, description of job currently being performed and allegations of safety violations.

2. Form 102-OD, Application for Resolution of Occupational Disease Claim (June 2005).

This form is used by claimants who are filing an occupational disease claim. We added phone number of plaintiff, previous award of workers' compensation benefits received or prior claims, description of job currently being performed and allegations of safety violations.

3. Form 103, Application for Resolution of Hearing Loss Claim (June 2005 Edition).

This form is used by claimants who are filing a hearing loss claim with our agency. We requested additional information such as date plaintiff aware of condition, previous award of workers' compensation benefits, current exposure, and allegations of safety violations.

4. Form 107-I, Medical Report – Injury (April 2005 Edition).

This form is used by physicians to provide medical information on claimants with an injury claim. We requested additional information such as prior examinations, physician review of diagnostic testing, explanation of causal relationship, date of MMI, and description of work at time of injury.

5. Form 107-P, Medical Report – Psychological (April 2005 Edition).

This form is used by physicians to provide medical information on claimants with a psychological claim. We requested additional information such as prior examinations, physician review of diagnostic testing, explanation of causal relationship, date of MMI, and description of work at time of injury.

6. Form 108-OD, Medical Report – Occupational Disease (April 2005 Edition).

This form is used by physicians to provide medical information on claimants with an occupational disease claim. We are requesting additional information such as physician review of diagnostic testing; explanation of causal relationship, prior active impairment, and work requirements at time of injury.

7. Form 108-CWP, Medical Report – Coal Workers' Pneumoconiosis (April 2005 Edition).

This form is used by physicians to provide medical information on claimants in a coal workers' pneumoconiosis claim. We are updating agency name information.

8. Form 108-HL, Medical Report – Hearing Loss (April 2005 Edition).

This form is used by physicians to provide medical information on claimants in a hearing loss claim. We are requesting additional information such as physician review

of diagnostic testing; explanation of causal relationship, prior active impairment, and work requirements at time of injury.

9. Form 110-F, Agreement – Fatality (January 2005 Edition).

This form is used by claimants' representatives and employers who agree to settle claims involving a fatality. This is a new form.

10. Form VRT, Petition for Vocational Rehabilitation Training (April 2005 Edition).

This form is a motion that may be used to petition for vocational rehabilitation training. This form has updated agency name information.

11. Form WVR, Joint Motion and Agreement to Waive Vocational Rehabilitation Evaluation (April 2005 Edition).

This form is used by claimants and employers who agree to waive vocational rehabilitation evaluation. This form has updated agency name information.

12. Form UEF-P, Motion for Payment from Uninsured Employers' Fund (April 2005 Edition)

This form is used to move for payment from the Uninsured Employers' Fund. This form has updated agency name information.

13. Form 11, Motion to Substitute Party and Continue Benefits (January 31, 2005)

This form is used upon death of plaintiff to substitute dependents as plaintiff in a workers' compensation case. This form has never been incorporated by reference.